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LESSONS FROM OSS LAWSUITS

Introduction

This week, we delve into a compelling facet of the OSS universe — the legal battles and disputes that have arisen when the principles of openness and the proprietary rights of creators clash. We explore a selection of cases that highlight the intricate dance between the freedom to use, modify, and distribute open-source code and the imperative to safeguard the intellectual property rights of software creators.

Google LLC v. Oracle America, Inc., No. 18-956, slip op. (Sup. Ct. 2021).

One of the most high-profile OSS-related legal battles is the recently concluded dispute between Oracle and Google.

The Oracle v. Google case began in 2010 when Oracle sued Google for copyright infringement. Oracle claimed that Google's Android operating system, used on billions of devices worldwide, improperly used Oracle's Java programming language and its Application Programming Interfaces (APIs) without permission. Oracle claimed that even though Google did not copy its Java source code, Google's Android software infringed on Oracle's Copyright by replicating the Java API interfaces and the functionality offered by Java. Google countered that their use of Java was protected under the doctrine of fair use.

The central issue in the case was whether Google's use of Java APIs constituted copyright infringement.

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Oracle argued that the APIs were copyrighted, and Google's use of them without a license violated Oracle's copyrights.

Google's defense was primarily based on the fair use doctrine. They contended that their use of Java's APIs was a fair and legal use, as it was transformative, non-commercial, and did not harm the market for Oracle's Java platform.

In 2012, the district court found that the structure, sequence, and organization of the 37 Java APIs used in Android were not copyrightable. However, the court also ruled in favor of Oracle, stating that Google infringed on Oracle's copyrights in the organization of the APIs.

The case was then appealed to the United States Court of Appeals for the Federal Circuit, which reversed the district court's decision on copyrightability and found that the APIs were indeed subject to copyright protection. The Court of Appeals found that the method declarations structure, sequence and organisation (SSO) of the Java SE API were protected by copyright.

The case returned to the district court for a new trial on fair use, where a jury found in favor of Google, stating that their use of the Java APIs constituted fair use.

Oracle appealed this decision, but in 2016, the U.S. Court of Appeals for the Federal Circuit upheld the fair use verdict.

Outcome:

In the end, the case had a complex legal journey and multiple appeals. The final verdict was in favor of Google, concluding that their use of Java's APIs in Android constituted fair use and, therefore, was not a copyright infringement.

This case has had significant implications for the software industry, especially concerning the use of APIs and the concept of fair use. It reaffirmed the importance of fair use as a defense in copyright cases and contributed to the ongoing debate about the scope of copyright protection for software interfaces and APIs.

DecisionQ Corp v. GigM Tech. LLC (E.D Va. 2018).

The parties were partners who were working on a government

contract for a virtual currency initiative. DecisionQ sued its sub-contractor GigM and GigM counter claimed for a declaratory order of ownership of the code.

The Plaintiff argued that for copyright to attach, there has to be a minimal degree of creativity and since opensource was autogenerated code, it was not copyrightable.

The Court held, not surprisingly, that using OSS does not necessarily render any resulting derivative work or compilation uncopyrightable. An open-source license may require, as a condition precedent to use, that any resulting compilation or derivative work be subject to the same license.

Therefore, the preexisting opensource code used in the GigM code did not defeat copyrightability of the GigM code.

IBM v Asus 2008-9 ITC

IBM sued several network router manufacturers mainly from Asia seeking an exclusion order to keep their routers out of the country. These allegedly infringing routers included Linux net filters code, a Linux kernel used to route packets of data. Asus defended themselves by pleading that IBM's own distribution of the Linux kernel gave them a license to net filters. Under this defence, it did not matter whether IBM itself had submitted the code to the Linux kernel, the defence was simply that IBM distributed the code hence it gave the world a license to its patents for the software regardless of its contribution to that code. The International Trade Commission agreed, stating that with regard to that code, the accused infringers were protected from suit under the GPL, hence claim was dismissed.

Ximpleware v Versata (2013-15 NDCal)

This is a mini saga of complex cases which began with a software license dispute in the Texas State Court. Versata sued its customer for breaching a software license claiming that the customer's engagement of a third party contractor to work with Versata software violated the Versata software license. Ameri-price, the

customer, discovered that Versata had third party opensource code which it had obtained from Ximpleware which code was licensed under the GPL, but Versata had not complied with the license. Ameri-price raised this as a defence and as a result, Ximpleware learned about the violation and sued both Versata and Ameri-price for both copyright and patent infringement, the copyright being based on Versata's failure to comply with the GPL, while the patent was based on Ameri-price's infringement of its patent.

This might not have ever come to light but for this underlying State Court license dispute. In the end, this whole fiasco resulted in at least 5 separate lawsuits.

Conclusion

The lessons learned from these real-world cases should guide the open-source software community in maintaining its spirit of openness and innovation while upholding ethical and legal responsibilities. In the face of legal challenges such as Oracle v. Google, the significance of understanding and respecting the licensing terms of open-source projects becomes evident. These cases underscore the importance of rigorous code auditing, legal compliance, and the vigilance of open-source advocates in enforcing licensing terms.

In the end, open source is not just a way of developing software; it's a philosophy of sharing and collective growth. As we continue our exploration of open-source software, we remain committed to understanding the challenges and opportunities that lie ahead, continually striving to strike the balance between the freedom to innovate and the responsibility to protect the intellectual property rights that underpin the world of open source.

If you have interest in an in-depth discussion on this subject matter or any technology law related issues, feel free to contact us at info@gobhozalegalpractice.co.bw Tel: 3116371